

THE TEMPLE OF HANEMANN HOMOEOPATHIC
MEDICAL COLLEGE AND HOSPITAL

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v.

UNION OF INDIA & ORS.

(Civil Appeal No. 6734 of 2018)

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JULY 17, 2018

[ARUN MISHRA AND S. ABDUL NAZEER, JJ.]

Homoeopathy Central Council Act, 1973:

ss.17 and 18 – Power to appoint team of Medical Inspectors for the purpose of inspection of colleges etc. – Whether it is with the Central Government or with the Central Council of Homoeopathy – High Court in the impugned judgment held that in view of Regulation 3(5) of Homoeopathy Central Council (Minimum Standards Requirement of Homoeopathy Colleges and Attached Hospitals) Regulations, 2013, Central Government has the power to appoint a team of Inspectors – On appeal, held: It is only the Central Council which is empowered to appoint a team of Inspectors u/s. 17 and Visitors for the examination u/s. 18 for making recommendation to the Central Government on the basis of report submitted by the team of Inspectors or Visitors as envisaged under ss. 17 and 18 – Role of Central Government is only supervisory and not to start an investigation by making the appointment of a team of Inspectors as that is not envisaged in the Act – Regulation 3(5) envisages random checks to be ordered on receipt of a complaint or otherwise as deemed necessary either by the Central Government or by the Central Council – It does not deal with the aspect who will appoint a team of Inspectors for the purpose of inspection to be carried out – Regulation 3(5) has to be harmoniously interpreted with the provisions of s. 17 – Section 17 is not capable of interpretation empowering the Central Government to appoint a team of Inspectors – Any other interpretation would be against legislative mandate – Regulations have to be subservient to the provisions of the Act – Appeals allowed – Homoeopathy Central Council (Minimum Standards Requirement of Homoeopathy Colleges and Attached Hospitals) Regulations, 2013 – Regn. 3(5).

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6734 of 2018.

From the Judgment and Order dated 13.03.2018 of the High Court of Judicature at Patna in Letter Patent Appeal No.1801 of 2017

WITH

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Civil Appeal Nos. 6739, 6737, 6736, 6735, 6738 and 6740 of 2018.

A. Mariarputham, Sr. Adv., Yusuf Khan, Akshay C. Shrivastava, K.V. Muthu Kumar, Ms. Sarvshree, Ms. Niranjana Singh, R. Balasubramanian, S.S. Rizvi, Ms. Aarti Sharma, Prabhas Bajaj, C Ms. Abha R. Sharma, D.S. Parmar, M. Abdullah, Sunil Narula, D.P. Chaturvedi, S.N. Bhat, Advs. for the appearing parties.

The following Order of the Court was passed:

ORDER

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1. Leave granted.

2. The question involved is with respect to the power of the Central Government to appoint a team of Medical Inspectors for the purpose of inspection of colleges etc. or it is within the power of the Central Council of Homoeopathy (CCH) to appoint a team of Inspectors.

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3. In order to decide the aforesaid question, we have to consider the ambit of the powers under the relevant statute the Homoeopathy Central Council Act, 1973 (in short referred to as 'the Act') provides for constitution of Central Council of Homeopathy and the functions of Central Council of Homeopathy and other matters connected therewith. The constitution of Central Council has been provided under Section 3 of the said Act. Central Council is a body corporate under Section 6 of the Act. It has its President and Vice-President and Members and their term is provided under Section 7 of the Act. There are various Committees as provided under the Act to be formed by the Central Council for the discharge of the functions enjoined upon it.

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4. Section 12A in Chapter II A of the Act of 1973, provides for the grant of permission for establishment of new medical institution, new courses of study, etc. Permission of Central Government is required to be obtained in accordance with the provisions contained in Section 12 of the Act. Explanation 2 of Section 12A (1) provides that the admission capacity in relation to any course of study or training (including post-

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graduate course of study or training) in a medical institution means the maximum number of students as may be decided by the “Central Council” from time to time for being admitted to such course or training. A

5. It is also provided in Section 12A (2)(a) that if any scheme is placed before the Central Government in accordance with the provisions of clause (b) of sub-Section 1 of Section 12A(a), the Central Government shall refer the scheme to the Central Council for obtaining its recommendation, meaning thereby that the function of Central Government is a supervisory one and it is the job of the Central Council to make the requisite recommendations. A detailed procedure is also given in Section 12A (3) of the Act to be adopted by the Central Council on receipt of such a scheme. The recommendations will have to be made under sub-Section 4 of the said Section 12A by the Central Council to the Central Government. Thereafter, it would be for the Central Government to approve or disapprove the scheme, after giving the person or medical institution a reasonable opportunity of being heard, as per proviso contained in Section 12A (4) of the Act. The Central Council while making its recommendation under clause (b) of sub-Section 3 of Section 12A and the Central Government while passing the order either disapproving or approving the scheme, shall have the due regard to the factors as enumerated in Section 12A (7) of the Act. B C D

6. Section 13 deals with the recognition of medical qualifications granted by certain medical institutions in India. Section 14 deals with the recognition of medical qualifications granted by medical institutions in States or countries outside India. Section 15 deals with the rights of persons possessing qualifications included in Second or the Third Schedule to be enrolled by the Central Council. E

7. Section 17 of the Act of 1973 provides in its unequivocal terms that power to appoint Medical Inspector is with CCH and not with Central Government. The provisions of section 17 are extracted hereunder: F

“Section 17(1) The Central Council shall appoint such number of medical inspectors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given, or to attend any examination held by any University, Board or medical institution for the purpose of recommending to the Central Government recognition of medical qualifications granted by that University, Board of medical institution. G H

A (2) The medical inspectors shall not interfere with the conduct of any training or examination but shall report to the Central Council on the adequacy of the standards of education including staff equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy, as the case may be, or on the sufficiency of every examination which they attend.

B (3) The Central Council shall forward a copy of any such report to the University, Board or medical institution concerned, and shall also forward a copy with the remarks of the University, Board or medical institution thereon to the Central Government.

C 8. Under Section 18 there is exclusive power with the Central Council to appoint the visitors at examinations. The section is extracted under:

D “18(1) The Central Council may appoint such number of visitors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given or to attend any examination for the purpose of granting recognized medical qualification.

E (2) Any person, whether he is a member of the Central Council or not may be appointed as a visitor under this Section but a person who is appointed as an inspector under Section 17 for any inspection or examination shall not be appointed as a visitor for the same inspection or examination.

F (3) The visitors shall not interfere with the conduct of any training or examination but shall report to the President of the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy or on the sufficiency of every examination which they attend.

(4) The report of a visitor shall be treated as confidential unless in any particular case the President of the Central council otherwise directs:

G Provided that if the Central Government requires a copy of the report of a visitor, the Central Council shall furnish the same.

H 9. It is only on the basis of a report submitted by a team of Inspector or visitors as it appears that the Central Council to make a recommendation under Section 19 of the Act of 1973.

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“Section 19 is extracted hereunder: A

Section 19 (1) When upon a report by the inspector or the visitor it appears to the Central Council;

(a) that the courses of study and examination to be undergone in or the proficiency required from candidates at any examination held by any University, Board or medical institution, or B

(b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University, Board or medical institution or in any college or other institution affiliated to the University. C

Do not conform to the standard prescribed by the Central Council, the central Council shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the government of the State in which the University, Board or medical institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University, Board or medical institution with an intimation of the period within which the University, Board or medical institution may submit its explanation to the State Government. D

(3) On the receipt of the explanation or where no explanation is submitted within the period fixed then on the expiry of that period the state government shall; make its recommendations to the Central Government. E

(4) The Central Government after making such further inquiry, if any, as it may think fit, may by notification in the Official Gazette, direct that an entry shall be made in the Second Schedule against the said medical qualification declaring that it shall be a recognized medical qualification only when granted before a specified college or institution affiliated to any University shall be recognized medical qualification only when granted before a specified date or as the case may be, that the said medical qualification shall be recognized medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date.” F
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A 10. It is clear from the provisions contained in the Sections 17 and
18 that Inspectors can only be appointed under the Act of 1973 by the
Central Council in order to enable it to make the requisite recommendation
to the Central Government. Appointment of visitors can also be made
exclusively by the Central council alone and not by the Central
B Government. The Act does not confer upon the Central Government to
appoint a team of inspectors to inspect the colleges etc. or visitors at the
examination for making the recommendation for recognition or for
withdrawal dealt with under the aforesaid provisions of Sections 17, 18
and 19.

C 11. The Regulations called the Homoeopathy Central Council
(Minimum Standards Requirement of Homoeopathy Colleges and attached
Hospitals) Regulations, 2013 (hereinafter referred to as Regulations, 2013)
has been framed in exercise of powers conferred under Section 33 (j) of
the Act.

D 12. Regulation 3 deals with the fulfillment of the minimum standard
requirement. Regulation 3 (5) deals with respect to the Inspectors.
Regulation 3 is extracted hereunder:

“Regulation 3. Fulfillment of minimum standard requirement: -

E (1) The college and attached hospital(s) shall fulfill the minimum
standards requirements of infrastructure and teaching and training
facilities referred to in the regulations 4 to 13.

F (2) For exposure of the students in the clinical field and to
understand the depth of operative surgery and operative
Gynecology or Obstetrics as well as management in critical
illnesses, a college shall have a Memorandum of Understanding
with a reputed nearby located super-specialty hospital (of modern
medicine) with all required facilities of operation theatre, labor
room, Intensive Care Unit and other required facilities for the
management of critical patients.

G (3) In case an attached hospital of a college does not have the
facilities to handle operation theatre and other critical patients,
the students of such a college can be deputed under the strict
supervision of concerned teaching faculty of the college for the
required exposure in the said field to the attached super-specialty
hospital.

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(4) The existing colleges and their attached hospitals established under Section 12A of the Act and those colleges and their hospitals established prior to the 28th January, 2003 and recognised by the Central Council of Homoeopathy shall fulfill the minimum standards requirements of infrastructure teaching and training facilities referred to in these regulations by the 31st December, 2014 for consideration of grant of permission for undertaking admission in the coming academic years. A B

(5) If a college fulfills the requirement by 31st December 2014 as per these regulations, it shall be granted permission to undertake admissions for a period not exceeding five years during which the college shall not be inspected, except for random checks on receipt of any complaint, or otherwise as deemed necessary either by the Central Government or by the Central Council of Homoeopathy. C

(6) The Central Council shall visit the college Suo moto three months before the expiry of permission. D

(7) The conditional permission shall be granted only to those colleges which are fulfilling at least the requirement of teachers as specified in Schedule-IV, the requirement of functional hospital as specified at sub-regulation (2) of regulation 7 and availability of equipment as specified in schedule-III for each academic year 2013-14 and 2014-15 on the basis of the separate inspections to be carried out by the Central Council of Homoeopathy after the 15th May, 2013 for the academic year 2013-14 and after the 31st December, 2013 for the academic year 2014-15. E

(8) Such conditional permitted colleges or those colleges which have been denied permissions during the academic year 2013-14 and/or 2014-15 will be required to fulfill the requirements as specified in these regulations by the 31st December 2014. F

(9) All the existing colleges, which are not able to achieve full compliance of the requirement as specified in these regulations by the 31st December, 2014, shall be denied permission from academic year 2015-16 onwards and action as envisaged under Section 19 of the Act shall be initiated against all such colleges apart from rejection of their applications under Sections 12A, which have been under consideration by way of conditional permission or denials.” G H

A 13. It is apparent from Regulation 3(5) that no inspection to be
made once permission has been granted which may be up to 5 years, as
the case may be, except as considered necessary either by Central
Government or CCH. The provision only confers power on Central
Government and CCH that inspection be ordered in the aforesaid period
B in case exigency happens i.e. random checks, on receipt of any complaint,
or otherwise as may be considered necessary. The regulation does not
deal with who will inspect and who will appoint a team of medical
inspectors that is dealt with in S.17 of the Act of 1973.

C 14. The Single Bench of the High Court has opined that Inspectors
cannot be appointed by the Central Government in exercise of powers
to cause inspection under Regulation 3 (5) of the aforesaid Regulations,
2013, whereas the Division Bench has opined that Regulation 3(5) has
to be given effect to as such the Central Government has the power to
appoint a team of inspectors in order to grant permission and to approve
the particular scheme. The decision of the Division Bench of the High
D Court at Patna is questioned in appeal.

E 15. We have heard the learned counsel for the parties at length.
It was submitted by the learned counsel appearing on behalf of the
appellants that the provisions contained in Section 17 has to prevail and
the interpretation of Regulation 3 (5) of the Regulations, 2013 has to be
made in the context of the Act not repugnant thereto. Even if it is held
that Central Government can order the inspection to be made but for
that request would only be made by Central Government to Central
Council. The Central Government cannot exercise the power to appoint
a team of Inspectors and that is specifically conferred under section
F 17 on the CCH.

G 16. Learned counsel appearing on behalf of the respondent Shri
Balasubramanian tried in vain to salvage the situation by placing reliance
upon the judgment rendered by the Division Bench of the High Court as
well as the object of the Act and regulations. He has vehemently
contended that Central Government is empowered to appoint the
inspectors as per Regulation 3(5) and the regulation cannot be said to be
in violation of provisions contained under Sections 17, 18 or 19 of the
Act of 1973. Thus, no case for interference is made out.

H 17. After hearing the learned counsel for the parties, we are of
the considered opinion that various legislations enacted by the Central

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Government, it has provided for constitution of statutory bodies, experts to deal with such matters of various kinds of education in the country for Medical Education, Medical Council of India has been constituted. Similarly, for legal education, power has been given under the Advocates Act to the Bar Council of India and with respect to other technical courses, power has been given to the AICTE and other bodies. A

18. The Central Government has not reserved the power to appoint Inspectors with it under the main enactment itself, i.e., the Act of 1973. B

19. A bare reading of the provisions contained under Section 17 makes it clear that as per statutory provision, duty has been enjoined upon the CCH to appoint a team of Inspectors. Such a power has been specifically conferred on such Expert Bodies under various enactments also. It is the function of the expert bodies in the field and they are supposed to appoint a team of Inspectors and it is for expert bodies to make the recommendations to the Central Government. The role of the Central Government is a supervisory one and not to start an investigation by making the appointment of a team of Inspectors, as that is not envisaged under the Act of 1973 itself. C D

20. Regulation 3(5) of the 2013 Regulations envisages random checks to be ordered on receipt of a complaint or otherwise as deemed necessary either by the Central Government or by the CCH. In case, CCH or Central Government receives any complaint, random checks can be ordered, but the regulations stop at that. It does not deal with the aspect who will appoint a team of inspectors for the purpose of inspection to be carried out. In our considered opinion, it is only the Central Council which is empowered to appoint a team of inspectors under Section 17 and visitors for the examination under Section 18 for making recommendation to the Central Government on the basis of report submitted by the team of inspectors or visitors as envisaged under Sections 17 and 18 of the Act. E F

21. Regulation 3(5) of Regulations of 2013 has to be harmoniously interpreted with the provisions of section 17 of the Act not repugnant thereto. The provision of section 17 is not capable of interpretation empowering the Central Government to appoint a team of inspectors at all. Thus, the power conferred under section 17 has to be exercised only by the CCH. Any other interpretation would be against the legislative mandate. The regulations have to be subservient to the provisions of the G

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- A Act. No other provision could be pointed out under which the Act may have conferred the power upon the Central Government to appoint a team of Medical Inspectors.

22. Thus, the Division Bench of the High Court has clearly erred in holding that the power to appoint the Inspectors is with the Central Government while interpreting Regulation 3(5) of the Regulations, 2013. The Central Government cannot appoint a team of Inspectors as this power has not been conferred upon the Central Government either under the said Regulation 3 (5) or any of provisions contained in the Act. It is only CCH which can appoint a team of inspectors as per Section 17 if the request is made by the Central Government under Regulation 3(5).

23. In our opinion, though Central Government on a complaint or otherwise, as contemplated under Regulation 3(5) of the Regulations, 2013 may cause inspection would mean only that inspection to be made by a team to be appointed by CCH. A team of inspectors or visitors as the case may be, can be appointed by CCH under Section 17 or 18 of the Act. However, after an inspection is made, action has to be taken on the basis of the report as provided under the Act and the Regulations by the Central Government on the basis of the recommendation made by the CCH.

24. The appeals are allowed. The impugned judgment and order passed by the division bench are set aside and that of the Single Bench is restored. No costs.